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July 29, 2013

BY CERTIFIED MAIL

Kenneth Linder, Manager
Henry's Self Serve Used Auto Parts, LLC
676 Rathburn Street
Blackstone, MA 01504
Certified Mail # 7011 1150 0000 0301 0354

Re: 60-Day Notice of Violations and Intent to File Suit Regarding Noncompliance with
Federal Clean Water Act's Industrial Stormwater Discharge Requirements: 676 Rathburn
Street, Blackstone, MA

Dear Mr. Linder:

This office represents Clean Water Action, a national non-profit citizens' organization working for prevention of pollution in the nation's waters, protection of natural resources, creation of environmentally-safe jobs and businesses, and empowerment of people to make democracy work. Clean Water Action has over one million members nationally, more than 50,000 of whom reside in Massachusetts.

Henry's Self Serve Used Auto Parts, LLC ("Henry's") submitted Notices of Intent ("NOI") to be covered by EPA's Multi-Sector General Stormwater Permit for Stormwater Discharges Associated with Industrial Activity ("Stormwater Permit") on November 22, 2010 and September 14, 2011.¹ The company has violated and continues to violate the permit's terms and conditions.

¹ The Stormwater Permit was first issued in 1995 and was reissued in 2000 and 2008. The 2008 Permit does not include significant changes to relevant provisions. See 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008).

We write to give notice that Clean Water Action intends to file a civil action in the United States District Court for the District of Massachusetts under section 505 of the Federal Clean Water Act (the "Act") against Henry's for noncompliance with the federal Clean Water Act's stormwater discharge requirements at its Rathbun Street facility. According to Henry's NOIs, stormwater runoff from the Facility is discharged to a catch basin that drains via the municipal storm drain system to a pond in Turbesi Park, a water in the Blackstone River watershed.

BACKGROUND

Activities that take place at industrial facilities, such as material handling and storage, are often exposed to the weather. As runoff from rain or snowmelt comes into contact with these materials, it picks up pollutants and transports them to nearby rivers, lakes, or coastal waters and tributaries thereto, including but not limited to storm sewer systems, wetlands, and other surface waters. Stormwater pollution is a significant source of water quality problems for the nation's waters. The following are *some* of the activities, pollutant sources and pollutants that are or may be present with Henry's automobile salvage yard:

Activity	Pollutant Source	Pollutant
Vehicle Dismantling	Oil, anti-freeze, batteries, gasoline, diesel fuel, hydraulic fluids, electrical switches	Oil and grease, ethylene glycol, heavy metals, mercury
Used Parts Storage	Batteries, chrome bumpers, wheel balance weights, tires, rims, filters, radiators, catalytic converters, engine blocks, hub caps, doors, drivelines, galvanized metals, mufflers	Sulfuric acid, galvanized metals, oil and grease, heavy metals, petroleum hydrocarbons, total suspended solids (TSS)
Outdoor Vehicle and Equipment Storage	Leaking engines, chipping/corroding bumpers, chipping paint, galvanized metal	Oil and grease, arsenic, organics, heavy metals, total suspended solids (TSS)
Vehicle and Equipment Maintenance	Parts cleaning	Chlorinated solvents, oil and grease, heavy metals, acid/alkaline wastes
	Waste disposal of greasy rags, oil filters, air filters, batteries, hydraulic fluids, transmission fluids, radiator fluids, degreasers	Oil, heavy metals, chlorinated solvents, acid/alkaline wastes oil, heavy metals, chlorinated solvents, acid/alkaline wastes, ethylene glycol
	Spills of oil, degreasers, hydraulic fluids, transmission fluid, and radiator fluids	Oil, arsenic, heavy metals, organics, chlorinated solvents, ethylene glycol
	Fluids replacement, including oil, hydraulic fluids, transmission fluid, and radiator fluids	Oil, arsenic, heavy metals, organics, chlorinated solvents, ethylene glycol
Vehicle, Equipment, and Parts Washing Areas	Washing and steam cleaning waters	Oil and grease, detergents, heavy metals, chlorinated solvents, phosphorus, salts, suspended solids
Liquid Storage in Above Ground Storage Tanks	External corrosion and structural failure	Fuel, oil and grease, heavy metals, materials being stored
	Installation problems	
	Spills and overfills due to operator error	
Illicit Connection to Storm Water Outfalls	Sanitary water	Bacteria, biochemical oxygen demand (BOD), suspended solids
	Floor drains	Oil and grease, heavy metals, chlorinated solvents, fuel, ethylene glycol

	Vehicle washwaters	Oil and grease, detergents, metals, chlorinated solvents, phosphorus, suspended solids
	Radiator flushing wastewater	Ethylene glycol
	Leaking underground storage tanks	Materials stored or previously stored

Clean Water Action will ask the Court to ensure Henry's future compliance with the Act, assess civil penalties in an appropriate amount,² award plaintiff litigation costs, including attorney and expert fees, and award any other relief the Court deems appropriate. Clean Water Action's complaint will be filed a minimum of 60 days after the postmark date of this letter. This is a formal 60-day notice of intent to sue that is being served pursuant to 40 C.F.R., Part 135.

This notice is being provided by:

Cindy Luppi, New England Regional Co-Director
Clean Water Action
262 Washington Street, Suite 301
Boston, MA 02108
(617) 338-8131
(617) 335-6449 (fax)

Counsel for Clean Water Action in this case is:

Nora J. Chorover
Stern, Shapiro, Weissberg & Garin, LLP
90 Canal Street, Suite 500
Boston, MA 02114
(617) 742-5800
(617) 742-5858 (fax)

HENRY'S VIOLATIONS AND DATES OF VIOLATIONS

Benchmark Limit Monitoring and Reporting

The EPA benchmark parameters applicable to Henry's discharges are total suspended solids (TSS), aluminum, iron and lead. The company was required to monitor for compliance with these benchmarks for at least four consecutive quarters, commencing, at the latest, in the January-March quarter of 2011.³ Henry's was to have submitted its monitoring reports to EPA

² The Act authorizes the Court to assess a penalty of up to \$37,500 per day for each violation occurring after January 12, 2009, *see* 33 U.S.C. § 1319(d), 73 Fed. Reg. 75340 (Dec. 11, 2008).

³ Monitoring must commence in the first full quarter following either April 1, 2009 or the Facility's date of discharge authorization, whichever date comes later. Stormwater Permit, pg. 34. Henry's permit authorization occurred during the October-December 2010 quarter. Accordingly, its first monitoring/reporting quarter was the January-March 2011 quarter.

within 30 days of receiving the results.⁴ This monitoring schedule may only be modified in climates with irregular stormwater runoff and only if a modified quarterly schedule is provided to EPA with the first benchmark sample.⁵

Henry's did not monitor or report on its stormwater discharges at all during the first two monitoring quarters of its permit coverage (January –March 2011 and April-June 2011). In its third monitoring quarter (July-September 2011), Henry's did not monitor for TSS or lead. Henry's did not monitor at all for the fourth or fifth monitoring quarters (October-December 2011 and January-March 2012). In the sixth monitoring quarter of its permit coverage (April-June 2012), Henry's did not monitor for TSS or lead. Moreover, its monitoring results during the sixth quarter showed benchmark exceedences of iron and aluminum. Since the effective date of the permit, Henry's has not completed four consecutive quarterly samples to determine whether its annual average values fall below benchmark limits. Henry's monitoring violations are further detailed on a Table attached as Exhibit A.⁶

To the extent additional monitoring and/or reporting violations become known to Clean Water Action before the action is filed, the complaint will seek remedy for such additional monitoring violations. To the extent additional monitoring and/or reporting violations are learned through discovery in the action, the complaint will be amended to seek remedy for such additional monitoring violations.⁷

Control Measures and Corrective Action

The Stormwater Permit requires Henry's to ensure that its control measures minimize its stormwater pollutant discharges and to modify its control measures as expeditiously as practicable whenever it finds that they "are not achieving their intended effect of minimizing pollutant discharges."⁸ Corrective action must be taken whenever the results of monitoring show

⁴ Stormwater Permit, pg. 41.

⁵ Stormwater Permit, pg. 34.

⁶ Clean Water Action believes that violations have occurred on the dates identified in this letter and on Exhibit A, and not just on rain days. However, to the extent it is determined that rain days are relevant in determining the dates of violations, such rain dates through July 23, 2013 are set forth on Exhibit B hereto. The complaint, when filed, will set forth additional rain dates since July 23, 2013.

⁷ Additional discovered monitoring violations may include, without limitation: failure to ensure representative sampling (General Permit, App. B, section B(1)(A), pg. B-5); failure to monitor from all facility outfalls (*id.*, section 6.1.1, pg. 33); failure to monitor during a measurable storm event following the preceding storm by at least 3 days (*id.*, section 6.1.3, pg. 33); failure to conduct monitoring in accordance with test procedures approved under 40 CFR Part 136 (*id.*, App. B, section B(10), pg. B-6); or failure to sample within the first 30 minutes of a measurable storm event (*id.*, section 6.1.4, pg. 34). Additional discovered reporting violations may include, without limitation, failure to submit all reporting data to EPA no later than 30 days after receipt of laboratory results (General Permit, section 7.1).

⁸ Stormwater Permit, section 2.0 (pg. 12) "Minimize" means "reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice." *Id.*

that “an exceedence of the 4 quarter average is mathematically certain.”⁹ Documentation of corrective action must be included in the annual report.¹⁰


Henry’s cannot establish that it has sufficient control measures in place because it has not been monitoring its discharges as is required by the permit. In addition, monitoring taken by Henry’s prior to the effective date of the permit indicates excessive levels of iron and aluminum in its stormwater discharge. Henry’s June 2, 2011 annual report to EPA states that no corrective action would be taken to address benchmark exceedences of iron and aluminum. The February 17, 2012 annual report also states that no corrective action is being taken. Henry’s violations of the permit’s requirement to minimize pollutants in its stormwater discharges are set forth on Exhibit A.

This Notice Letter alleges that Henry’s failed to implement adequate control measures based on information presently available to Clean Water Action. If additional information regarding this violation becomes known to Clean Water Action in the future, the complaint may set forth some or all of such additional information. If additional violations of the Permit’s requirement for adequate control measures are learned through discovery in the action, the complaint will be amended to seek remedy for such additional violations.

CONCLUSION

Clean Water Action believes this Notice of Violations and Intent to File Suit sufficiently states the basis for a civil action. During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact Nora Chorover at 617-742-5800 within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,


Nora J. Chorover, Attorney for
CLEAN WATER ACTION

⁹ Stormwater Permit, pg. 19.

¹⁰ *Id.*

Kenneth Linder
July 29, 2013
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cc: (by certified mail)

Kenneth Linder, Agent
Henry's Self Serve Used Auto Parts, LLC
211 Granite Street
Worcester, MA 01601
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U.S. Department of Justice
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Kenneth L. Kimmell, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108
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EXHIBIT A

EXHIBIT A

HENRY'S SELF SERVE USED AUTO PARTS – MONITORING, INSPECTION AND REPORTING VIOLATIONS

Type of Violation	Parameters	Beginning Date of Violation	Earliest End Date of Violation
Failure to Monitor for Compliance with Benchmark Limits	TSS	March 31, 2011	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	TSS	April 30, 2011	The present
Failure to Monitor for Compliance with Benchmark Limits	Total Iron	March 31, 2011	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	Total Iron	April 30, 2011	The present
Failure to Monitor for Compliance with Benchmark Limits	Total Lead	March 31, 2011	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	Total Lead	April 30, 2011	The present
Failure to Monitor for Compliance with Benchmark Limits	Total Aluminum	March 31, 2011	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	Total Aluminum	April 30, 2011	The present
Failure to Monitor for Compliance with Benchmark Limits	TSS	June 30, 2011	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	TSS	July 31, 2011	The present
Failure to Monitor for Compliance with Benchmark Limits	Total Iron	June 30, 2011	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	Total Iron	July 31, 2011	The present
Failure to Monitor for Compliance with Benchmark Limits	Total Lead	June 30, 2011	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	Total Lead	July 31, 2011	The present
Failure to Monitor for Compliance with Benchmark Limits	Total Aluminum	June 30, 2011	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	Total Aluminum	July 31, 2011	The present
Failure to Monitor for Compliance with Benchmark Limits	TSS	September 30, 2011	The present

Type of Violation	Parameters	Beginning Date of Violation	Earliest End Date of Violation
Failure to Report on Monitoring for Compliance with Benchmark Limits	TSS	October 31, 2011	The present
Failure to Monitor for Compliance with Benchmark Limits	Lead	September 30, 2011	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	Lead	October 31, 2011	The present
Failure to Monitor for Compliance with Benchmark Limits	TSS	December 31, 2011	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	TSS	January 31, 2012	The present
Failure to Monitor for Compliance with Benchmark Limits	Total Iron	December 31, 2011	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	Total Iron	January 31, 2012	The present
Failure to Monitor for Compliance with Benchmark Limits	Total Lead	December 31, 2011	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	Total Lead	January 31, 2012	The present
Failure to Monitor for Compliance with Benchmark Limits	Total Aluminum	December 31, 2011	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	Total Aluminum	January 31, 2012	The present
Failure to Monitor for Compliance with Benchmark Limits	TSS	March 31, 2012	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	TSS	April 30, 2012	The present
Failure to Monitor for Compliance with Benchmark Limits	Total Iron	March 31, 2012	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	Total Iron	April 30, 2012	The present
Failure to Monitor for Compliance with Benchmark Limits	Total Lead	March 31, 2012	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	Total Lead	April 30, 2012	The present
Failure to Monitor for Compliance with Benchmark Limits	Total Aluminum	March 31, 2012	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	Total Aluminum	April 30, 2012	The present

Type of Violation	Parameters	Beginning Date of Violation	Earliest End Date of Violation
Failure to Monitor for Compliance with Benchmark Limits	TSS	June 30, 2012	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	TSS	July 31, 2012	The present
Failure to Monitor for Compliance with Benchmark Limits	Lead	June 30, 2012	The present
Failure to Report on Monitoring for Compliance with Benchmark Limits	Lead	July 31, 2012	The present
Failure to Minimize Stormwater Pollutant Discharges	All	January 1, 2011	The present

EXHIBIT B

EXHIBIT B

DAYS BETWEEN JANUARY 1, 2009 AND JULY 23, 2013 ON WHICH STORMWATER FROM FACILITY DISCHARGED TO WATERS OF THE UNITED STATES

January 2009:	1, 7, 8, 11, 18, 19, 29
February 2009:	4, 12, 19, 23, 28
March 2009:	2, 3, 9, 10, 27, 29, 30, 31
April 2009:	2, 4, 7, 11, 12, 21, 22, 23
May 2009:	6, 7, 8, 9, 15, 17, 27, 30
June 2009:	10, 12, 14, 19, 20, 22, 23, 30
July 2009:	2, 3, 8, 9, 12, 18, 21, 22, 24, 25, 31
August 2009:	1, 21, 23, 29, 30
September 2009:	12, 13, 27, 28, 29
October 2009:	3, 4, 7, 8, 10, 14, 16, 19, 25, 28, 29
November 2009:	14, 15, 20, 21, 24, 27, 28
December 2009:	1, 3, 6, 9, 10, 14, 20, 21, 27, 28
January 2010:	1, 3, 18, 20, 26
February 2010:	11, 16, 17, 24, 25, 26, 27
March 2010:	1, 4, 5, 14, 15, 16, 23, 24, 26, 27, 29, 30, 31
April 2010:	10, 17, 23, 27
May 2010:	5, 8, 9, 19, 27
June 2010:	1, 2, 4, 10, 11, 13, 21
July 2010:	11, 14, 15, 17, 20, 24, 25
August 2010:	6, 10, 16, 17, 23, 24, 25, 26
September 2010:	4, 17, 27, 29
October 2010:	2, 4, 5, 6, 7, 15, 28
November 2010:	5, 6, 8, 9, 10, 17
December 2010:	2, 13, 23, 27
January 2011:	3, 8, 12, 13, 19, 21, 22, 27
February 2011:	2, 3, 6, 8, 9, 10, 25, 26, 27
March 2011:	1, 7, 11, 12, 17, 22
April 2011:	1, 5, 6, 13, 14, 17, 20, 24
May 2011:	5, 8, 15, 16, 18, 19, 20, 24, 25
June 2011:	2, 9, 10, 12, 18, 23, 24, 26
July 2011:	9, 14, 24, 26, 27
August 2011:	7, 8, 10, 11, 15, 16, 22, 28, 29
September 2011:	6, 7, 8, 9, 21, 24, 29, 30
October 2011:	1, 4, 13, 14, 15, 20, 28, 30
November 2011:	11, 17, 18, 23, 24, 30
December 2011:	7, 8, 22, 23, 28
January 2012:	12, 13, 17, 20, 22, 24, 27, 28

February 2012:	25
March 2012:	1, 2, 3, 4
April 2012:	1, 2, 23, 24
May 2012:	2, 9, 10, 15, 16, 23
June 2012:	2, 3, 5, 7, 8, 13, 14, 23, 26, 30
July 2012:	2, 5, 19, 24, 29
August, 2012:	1, 2, 6, 11, 16
September 2012:	5, 6, 9, 19
October 2012:	3, 7, 8, 11, 13, 16, 20, 29
November 2012:	8, 9, 28
December 2012:	8, 9, 10, 11, 17, 22, 27, 30
January 2013:	16, 17, 29, 30, 31
February 2013:	12, 17, 18, 24, 25, 27, 28
March 2013:	8, 13, 20
April 2013:	1, 2, 10, 12, 20, 24, 26
May 2013:	9, 10, 22, 24, 25, 26, 29, 30
June 2013:	7, 8, 11, 14, 15, 18, 19, 28
July 2013:	9, 23